IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3909 OF 1989

Sanjivani Dattatraya Tendulkar & Ors. : Petitioners

(Orig. Plaintiffs)

V/s.

Smt.Girjadevi Upendra Prabhu

(since deceased) : Respondent

(Orig. Defendant)

AND

Smt.Pushpalata N. Pai & Ors. : Respondents

(Orig.Proposed Defendants No.1(a) to 1(c)

...

Mr.A.G.Toraskar for the petitioners.

Mr.G.S.Godbole for respondent nos.2 to 4.

...

CORAM : S.A. BOBDE, J.

June 6, 2005.

P.C.:

1. The petitioners have approached this Court against an order refusing them permission to amend their plaint. They have filed a suit for eviction against the respondents.

2. One of the grounds in the suit is under section 13(1)(k) of the Bombay Rent Act which enables a landlord to evict a tenant who has not used the premises for a continuous period of six months.

3. This suit was filed in the year 1968 against the existing tenant Girjadevi. After the close of the defendant's evidence on 12.8.1987, Girjadevi died on 3.8.1988. The petitioner applied for bringing the heirs on record vide para 2 of the application made on 28.9.1988. This has been allowed by way of permission to amend the plaint. The petitioner also sought to insert para 3 which reads as follows:-

> "3. The suit premises are business premises which are used for hotel business. The Defendant has given the said hotel business for conducting to third parties from 1969 till to-day. None of the above said Respondents was using the suit premises for the purposes of carrying on the hotel business in the said premises with the defendant tenant at the time of her death. In the circumstances the said Respondents

> are being brought on record as per Sec. 5(11)(c) of the Bombay Rent Act 1947 as amended by Maharashtra Act 22 of 1978 subject to the conditions and limitations contained in the said Maharashtra Act 22 of 1978. The Respondents are therefore not entitled to protection under the Bombay Rent Act 1947 as amended."

This has been rejected by the Court.

4. Mr.Toraskar, learned counsel appearing for the petitioners, submitted that this para 3 ought to have been allowed to be inserted in the plaint and the prayer to amend has been wrongly rejected. Mr.Godbole, learned counsel for respondent nos.2 to 4, submitted that one sentence, viz., "The defendant has given the said hotel business for conducting to third parties from 1969 till today" is grossly belated since it pertains to an alleged act of Girjadevi of the year 1969.

5. This submission appears to be correct. Having regard to overall circumstances, the parties have consented to the following order, viz., that para 3 be allowed to be inserted in the plaint, barring the aforesaid sentence

pertaining to the defendant Girjadevi having given the hotel premises for conducting to third parties since 1967. The petitioners shall be entitled to include para 3 barring the aforesaid sentence reproduced above. The respondents shall be entitled to file consequential Written Statement opposing the amended pleadings.

6. The petition stands allowed to the aforesaid extent.

Sd/-

S.A. BOBDE, J.